

**AGREEMENT BETWEEN
THE CITY OF NORFOLK
AND**

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—

This Agreement dated this ____ day of _____, 2016 by and between the City of Norfolk, a municipal corporation chartered by the Commonwealth of Virginia (the “City”) and _____ (the “Contractor”), whose address is _____.

WHEREAS the City desires to obtain financial consultant services for the Department of utilities and accordingly undertook a procurement whereby the City issued Request for Proposals (RFP) 4847-0-2016 soliciting proposals for such services; and

WHEREAS Contractor is qualified to provide the services and its Proposal dated _____, 2015 in response to RFP 4847-0-2016 was determined to be most advantageous to the City; now therefore

WITNESSETH

In consideration of the mutual promises continued herein the receipt of which is hereby acknowledged and such other valuable consideration hereinafter set forth that the City and Contractor hereby agree as follows:

1. SCOPE OF SERVICES

Contractor shall provide financial consultant services to the City’s Department of Utilities and assist the Department with various financial matters as set forth herein as detailed in the following Exhibits which are attached hereto and incorporated herein.

- a. Exhibit A – Proposal dated _____, 2015 (the “Proposal”)
- b. Exhibit B – RFP 4847-0-2016.

In the event of any conflict between or among the Exhibits and this Agreement, this Agreement shall govern.

Such services include but are not limited to the following tasks:

- 1. Wholesale Rate Development for Virginia Beach:
 - a. Project water rates for the City of Virginia Beach biannually from July 1, 2017 through June 30, 2019, and every two-year period thereafter, using the established rate making methodology and practices as stated in the Water Services Contract between the City of Norfolk and the City of Virginia Beach. Provide results to the City for distribution to Virginia Beach no less than 120 days prior to the beginning of the two (2) year period. Make model modifications and provide appropriate documentation as required by changes in Virginia Beach’s capacity utilization requirements, system design requirements, City-Virginia Beach mutually agreed operational changes, and contract revisions by City and

Virginia Beach. See Attachment 4 – Virginia Beach Water Services Contract, for example of rate study report and Attachment 5 for Section 6.0 of Virginia Beach Water Services Contract, “Rates and Charges.”

b. Calculate “true-up” revenue for the City of Virginia Beach, bi-annually from July 1, 2013 through June 30, 2015, and every two year period thereafter, based on the audited books and records of the City, using the established rate making methodology and practices as stated in the Water Services Contract between the City of Norfolk and the City of Virginia Beach. Provide results to the City for distribution to Virginia Beach within six (6) months after the close of the fiscal year 2015. Make model modifications and provide appropriate documentation as required by changes in Virginia Beach’s capacity utilization requirements, system design requirements, City-Virginia Beach mutually agreed operational changes, and contract revisions by City and Virginia Beach. See Attachment 4 for Section 6.0 of Virginia Beach Water Services Contract, “Rates and Charges.”

c. Review Water Fund fixed asset system, Microsoft Access, for upload into the rate model. The City’s fixed asset accounting system resides on a custom software application database in Access. Provide fixed asset reporting including, but not limited to, depreciation calculations, accumulated depreciation, net book value, and construction work in process in accordance with generally accepted accounting principles.

d. An Offeror shall develop Norfolk’s own computer databases to collect data required for true-up and rate development process for Virginia Beach. The models shall house data including but not limited to: operating and maintenance expense cost allocations and adjustments, maximum hour demand, meter test results, and flows.

e. Develop computer rate model for calculating rates in accordance with established rate-making methodology and practices and in accordance with the City’s contractual obligations. The model shall be in either an Excel or Access file format. Future updates shall conform with any changes to the City’s microcomputer software standards. The Contractor shall provide model, user documentation and adequate training to enable the City staff to operate model.

f. Present to the City findings and recommendations resulting from the preparation of the biennial “true-up” report to maximize revenue recovery from Virginia Beach.

2. Bond Feasibility Study:

a. Prepare revenue bond feasibility reports to incorporate in Official Statements for periodic Series Revenue Bond issues. Include results from and explanation of the Department’s five-year financial plan. Describe facilities, operations, capital program needs and contractual relationships in sufficient detail to provide prospective bond holders with insight on the City’s water system’s projected financial condition and support for the proposed bonds.

b. Serve as a member of the bond working group by attending meetings, reviewing draft materials, and assisting with presentations to bond rating agencies and bond insurers. Provide appropriate certificates required by bond attorney and underwriter.

c. For any bond refunding calculate impact of Debt Service Savings compared to change in projected Virginia Beach revenue.

3. Financial Advisory Services:

- a. Advise and assist the City in the strategic analysis of the impact of selling water to new customers.
- b. Advise the City on financing alternatives on long and short-term capital projects.
- c. Prepare sensitivity analyses covering a variety of issues of interest to the City by appropriately using any of the above models.
- d. Assist in contract negotiations for the sale of the City's surplus water as financial and rate consultant. Provide requested calculations, review draft materials, attend meetings, and recommend optional approaches aimed at meeting City objectives.
- e. Provide advice to the City on external issues that have a financial impact on the Water and Wastewater Funds.
- f. Attend and participate in meetings as requested.
- g. Provide any other analysis or support as may be required to maintain the Utilities mission.

All financial advisory services shall be provided only as the City may request.

2. COMPENSATION

The City will pay Contractor compensation based upon the hourly rates for each service as set forth in the Fee Schedule in its Proposal. Contractor will submit separate itemized invoices showing fee for each individual who worked by showing the name, hourly rate, number of hours worked, extended fee for each individual and the total fees. The City will pay invoices in the ordinary course of business.

For the period from January 1, 2016 through December 31, 2021 Contractor shall be compensated for services in an amount not to exceed _____ (\$_____) per year.

3. TERM

The term of this Agreement shall be for a period of five (5) years beginning on January 1, 2016 through December 31, 2021, unless sooner terminated in accordance with Section 6 of this Agreement.

4. PRIME CONTRACTOR RESPONSIBILITIES

Contractor shall act as the prime contractor for all services provided hereunder and shall assume full responsibility for the requirements set forth herein. Contractor shall be considered the sole point of contact with regard to all stipulations including payment of all charges and the meeting of all requirements of this Agreement.

5. INDEMNIFICATION AND INSURANCE REQUIREMENTS

The Contractor shall defend indemnify and save harmless the City of Norfolk, Virginia and its

representatives from and against losses and claims, demands, suits, actions, payments and judgments arising from personal injury or otherwise, brought or recovered against the City or its representatives by reason of any negligent act or omission of the Consultant, its agents, servants or employees, in the execution of the contracted work, including any and all expense, legal and otherwise, incurred by the City or its representatives in the defense of any claim or suit.

Contractor shall maintain during the term of this Agreement insurance of the types and in the amounts described below. All general liability and automobile/vehicle liability policies will be written in an "occurrence" form unless otherwise specifically approved by the City. The City, its officers, employees, agents and representatives will be included as "Additional Insured" on such policies. All insurance policies affected by this Agreement shall be primary and noncontributory to any other insurance or self-insurance maintained by the City. Insurance policies shall provide that the Contractor will receive at least thirty (30) days written notice in the event of cancellation of, or material change in, any of the policies. If the Contractor fails to maintain the insurance as set forth in this Agreement, the City shall have the right, but not the obligation, to purchase such insurance at Contractor's expense

COMMERCIAL GENERAL LIABILITY INSURANCE. Commercial General Liability Insurance (CGL) with a limit of not less than \$3,000,000 each occurrence, \$5,000,000 general aggregate. Umbrella or Excess liability insurance may be used to provide these limits. Insurance shall be written on an approved ISO form for coverage in the Commonwealth of Virginia, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and liability assumed under insured contract.

WORKER'S COMPENSATION INSURANCE AND EMPLOYER'S LIABILITY INSURANCE: The Contractor shall maintain the applicable statutory Workers' Compensation Insurance, and Employer's Liability Insurance with a limit of at least \$500,000 per accident/disease, and policy limit of \$500,000.

AUTOMOBILE/MOTOR VEHICLE LIABILITY INSURANCE: The Contractor shall maintain Automobile Liability insurance with a limit of not less than \$ 2 million combined single limit; or, Bodily Injury \$1,000,000 each person, \$2,000,000 accident, and Property Damage \$100,000 each accident. Such insurance shall cover liability arising from any motor vehicle as defined by Commonwealth of Virginia laws and shall include coverage for owned, hired and non-owned motor vehicles, as well as uninsured and underinsured motorists. Coverage shall be written on an approved ISO Form for coverage in the Commonwealth of Virginia.

PRIVACY AND BREACH OF INFORMATION LIABILITY INSURANCE: The Contractor shall maintain during the term of this Agreement liability insurance as shall protect the Contractor against legal liability brought by third parties alleging one or more of the following actions arising from work performed while providing services in the performance of this contract.

- a. Dissemination of Information in Violation of Right of Privacy;

- b. Collecting Information in Violation of Right of Privacy;
- c. Theft and use of Information in Violation of Right of Privacy;
- d. Breach of privacy due to theft of data (e.g. credit cards, financial or health related data).

Such liability insurance coverage may be provided either by separate policies or in combination with other liability insurance required in this contract. The minimum acceptable limits of liability to be provided by such liability Insurance shall be: not less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

FIDELITY AND FAITHFUL PERFORMANCE; The Contractor shall maintain during the term of this Agreement such Fidelity and Faithful Performance Insurance /Bond coverage as shall protect against Contractor's/his employee's dishonesty; forgery or alteration; theft, disappearance and destruction of money and securities, as well as computer fraud and losses due to a lack of faithful performance which may arise from the performance of the Representative duties and obligations under this contract whether such operations be by the Contractor, the Contractor's staff, or by any Subcontractor or anyone directly or indirectly employed by either of them. The minimum acceptable limits of liability to be provided by such Insurance/bond shall be \$100,000 Each Incident/Annual Aggregate.

INSURANCE POLICIES/CERTIFICATE OF INSURANCE. Contractor shall furnish the City with two (2) copies of the policies, or a certificate(s) of insurance evidencing policies, required in this Agreement. The certificate(s) shall specifically indicate that the insurance includes any extensions of coverage required in this Agreement. In the event of cancellation of, or material change in, any of the policies, the Contractor shall notify the City within at least 14 days after receiving notice of such cancellation or policy change and provide evidence that insurance coverage is in place to meet the requirements of this Agreement. If coverage on said certificate(s) is shown to expire prior to completion of all terms of this Agreement/Contract, the Contractor shall furnish a certificate of insurance evidencing renewal of such coverage to the City within 10 days of the effective date such renewal. All certificates shall be executed by a duly authorized representative of each insurer, showing compliance with the requirements of this Agreement. Failure of the City, and/or the City's designated agents for this Agreement, to (1) demand such certificates or other evidence of full compliance with these requirements, and, or (2) identify a deficiency from evidence that is provided shall not be construed as a waiver of the Contractor's obligation to maintain such insurance.

SUBCONTRACTOR'S INSURANCE: The Contractor shall require each of his Sub-Contractors to take out and maintain during the term of the subcontract insurance coverage of the same type and limits required of the Contractor for work performed by the sub-contractor. Each Sub-contractor shall furnish to the Contractor two (2) copies of the policies, or certificates of insurance, evidencing such insurance. The Sub-Contractor shall comply with the same requirements regarding indications of coverage, renewal and submission of policies as is required of the Contractor. The Contractor shall furnish at least one copy the Sub-Contractor's polices/certificate to the City.

6. TERMINATION

This Agreement may be terminated by either party by giving ninety (90) days prior written notice. In the event of termination Contractor will be paid compensation only to the date of termination for services rendered to that date.

7. GOVERNING LAW AND VENUE

This Agreement is made under and shall be construed according to the laws of the Commonwealth of Virginia. Venue in the event of litigation shall be in the City of Norfolk.

8. ETHICS IN PUBLIC CONTRACTING

Contractor hereby certifies that it has familiarized itself with §§33.1-86 through 33.1-93 of the Code of the City of Norfolk, Virginia, 1979, as amended entitled Ethics in Public Contracting, and further that all amounts received by Contractor pursuant to this Agreement are proper and in accordance therewith.

9. NONDISCRIMINATION

In the performance of this Agreement Contractor agrees that it will adhere to the nondiscrimination requirements set forth in §33.1-53 of the Code of the City of Norfolk, Virginia, 1979, as amended.

10. NONSOLICITATION OF EMPLOYMENT

Contractor agrees not to hire or solicit the employment of any employee of the city with whom Contractor comes into contact as a result of tasks performed under this Agreement and for six months after the termination of the last task assignment. The City agrees not to hire or solicit the employment of any Contractor employee assigned to the City during the term of such employee's task assignment and for six months after the termination of the employee's task assignment. These restrictions may be waived by mutual written agreement.

11. NOTICES

All notices requests demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly made when received by U.S. Mail or hand delivery.

Notices to the City shall be addressed as follows:

Director of Utilities
400 Granby Street, 2nd Floor
Norfolk, Virginia 23510

Notices to Contractor shall be addressed as follows:

12. NONASSIGNMENT

Neither Contractor nor the City may assign or transfer its rights or duties under this Agreement without the prior written consent of the other.

13. COMPLIANCE WITH FEDERAL IMMIGRATION LAW

At all times during which any term of this Agreement is in effect Contractor does not and shall not knowingly employ any unauthorized alien. For purposes of this paragraph an “unauthorized alien” shall mean any alien who is neither lawfully admitted for permanent residence in the United States nor authorized to be employed by either Title 8 Section 1324a of the United States Code or the U.S. Attorney General.

IN WITNESS WHEREOF the City and Contractor have caused their duly authorized officials to execute this Agreement.

CITY OF NORFOLK

City Manager

ATTEST:

City Clerk

(CONTRACTOR)

Name: _____
Title: _____

CONTENTS APPROVED:

Director of Utilities

FORM AND CORRECTNESS APPROVED:

Deputy City Attorney

CERTIFICATE OF FUNDING

I hereby certify that the money required for work performed for City of Norfolk under this Agreement is in the City Treasury to the credit of the fund from which it is to be drawn and not appropriated for any other purpose.

Amount: \$ _____
Account: _____
Vendor: _____
Contract No: _____

Director of Finance Date